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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/023,483    02/13/98    HEROUX    J    2528-2

HM22/1107

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EXAMINER

TUNG, J

ART UNIT

PAPER NUMBER

1656

DATE MAILED:

11/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Advisory Action

Application No.

09/023,483

Applicant(s)

Heroux et al.

Examiner

Joyce Tung

Group Art Unit

1656



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Jul 10, 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Sep 8, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

- ☒ will not be entered because:

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: Please see the attached.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see the attached.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: claims 1-40

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other interview summary in paper #11

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1. The proposed amendment will not be entered because it is unclear how total DNA can be measured according to the claim language since DNA is not necessarily accessible to primers for polymerase chain reaction. Measuring total DNA broadens the scope of the quantification. This raises a new issue that is enablement which requires new search.
2. Since it is unclear how the total DNA is measured based upon the claim language and the definition of the total DNA in the specification, Hartley discloses the method can be used for quantification (See column 6, lines 42-43) and the source of nucleic acid is DNA or RNA which can be a double or single stranded nucleic acid sequence (See column 3, lines 34-42). Thus the rejection is maintained.
3. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Joyce Tung whose telephone number is (703) 305-7112. The examiner can normally be reached on Monday-Friday from 8:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached at (703) 308-1152.

Any inquiries of a general nature or relating to the status of this application should be directed to the Chemical/Matrix receptionist whose telephone number is (703) 308-0196.
4. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Art Unit 1656 via the PTO Fax Center located in Crystal

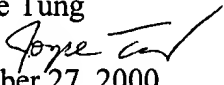
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Mall 1 using (703) 305-3014 or 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Joyce Tung

  
October 27, 2000

  
W. Gary Jones  
S Advisory Patent Examiner  
echnology Center 1600